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NOTE AND COMMENT

LIABILITY OF CARRIERS FOR INJURIES ARISING FROM FAILURE TO HAVE WAITING ROOMS PROPERLY HEATED.—It is elementary that a railway company is under an obligation to keep its station-house and the grounds that are immediately about it, insofar as they are open to the traveling public, in a safe and usable condition. Cases under this head usually arise on account of the failure of the company to exercise proper care in the construction or maintenance of its station approaches, station buildings and station platforms and stairs. See, for example, *Fullerton* v. *Fordyce*, 121 Mo. 1, 25 S. W. Rep. 587, 42 Am. St. Rep. 516; *Jordan* v. *New York, New Haven & Hartford Railroad Company*, 165 Mass. 346, 43 N. E. Rep. 111, 52 Am. St. Rep. 522. But sometimes a company renders itself liable because of its failure to furnish to its patrons, while waiting for trains in its station house, adequate protection from inclement weather conditions. In the recent case of *Cincinnati, N. O. & T. P. R'y Co.* v. *Mount* (Oct. 23, 1907), 104 S. W. Rep. 748, the Court of Appeals of Kentucky considers the question of the liability of a railroad company resulting from the failure of the company to provide a comfortably heated waiting room. It was claimed by the plaintiff that, while

waiting for her train in the station of the company, she contracted a severe cold with which she was confined to her bed for several days, and from which she suffered great pain; that the cold was due to the fact that the waiting room of the company in which she was expected to remain until her train arrived, was unheated. It was shown, and not denied, that there was no fire in the waiting room at the time, that the attention of the station agent was called to the fact of its chilly and uncomfortable condition, and that he was requested to have a fire started. There was a sharp dispute as to the condition of the weather, the evidence in behalf of the plaintiff tending to show that the day was cold and disagreeable, while that in behalf of the company was to the effect that the weather was mild and temperate. It was insisted by the railroad company that the testimony as a whole did not show negligence in the company in failing to have the waiting room heated by a fire, and that it was reasonable to conclude that the sickness and suffering of the plaintiff were due to her failure to exercise ordinary care in the protection of herself. The testimony of the plaintiff evidently appealed to the jury, since they awarded her a verdict of $400.

The court of appeals refused to disturb the judgment of the lower court, holding that, by the statutes of the state that provide that railroad waiting rooms shall be kept comfortably warm in cold weather, and also at the common law, a railroad company is under an obligation to maintain a fire in a waiting room, if necessary for the comfort of its patrons, and is liable for any damage resulting to a passenger from its failure so to do.

There is no doubt as to the soundness of the legal conclusion reached in this case by the appellate court. In a controversy of this kind the serious question must usually be one of fact and not of law. It would seem that in most cases it would be difficult to show that a cold and its consequent troubles were to be traced directly to the failure of a railroad company to keep its waiting room comfortable. Yet that this may be done to the satisfaction of a jury and in such a way that an appellate court will allow the verdict and judgment to stand, is apparent, not only from the result in the case under review, but also from results in other cases to which reference may be made.

A very recent case involving this question is that of *St. Louis, I. M. & S. R. Co.* v. *Hook,* decided by the Supreme Court of Arkansas July 22, 1907, and reported in 104 S. W. Rep. 217, wherein the railroad company was sued for damages for maintaining a waiting room in so cold and uncomfortable a condition that the plaintiff, a child, while waiting for a belated train, contracted pneumonia. "The evidence shows," said the court, "that the child was necessarily kept in the station for some time on a cold winter night. A northwest wind was blowing, and it was 'spitting snow.' Pneumonia was prevalent in the vicinity. The station was small, dirty, ill smelling, and unheated. The child got very cold, and his father several times took him out of the room and walked him around the station under cover of the roof in order to keep him warm. When he got on the heated coach of the train, he was shivering, and at once fell asleep. The next night he woke up with a chill. A physician was called in, and he was found to be in high fever,

and pneumonia had developed. The child was warmly clad, and was only taken three hundred yards from the house to the station, and then waited some hours for the train." There was conflicting testimony upon the subject of proximate cause. The jury found for the plaintiff. The supreme court concluded that if the condition of the waiting room was the proximate cause of the pneumonia, the railroad company would be liable, and that it could not be said, in view of the evidence, that it was the duty of the court to take the case from the jury upon the question of proximate cause.

In *Texas & Pac. R'y. Co.* v. *Mayes,* Texas Court of Civil Appeals, 15 S. W. Rep. 43, the plaintiff recovered a verdict for $250 for suffering sustained from contracting a severe cold and fever while waiting in an insufficiently heated station of the defendant company for a delayed train for which she had purchased a ticket. The reviewing court held that it was both the statutory and common law duty of the company to keep its passenger depots lighted and warm a reasonable time before the arrival and departure of passenger trains. The judgment below was affirmed, the court saying that the evidence supported the verdict and judgment and that the amount of damages awarded was not excessive. In *Texas & Pac. R'y. Co.* v. *Cornelius,* 10 Texas Court of Civil Appeals, 125, 30 S. W. Rep. 720, the reviewing court sustained a verdict and judgment for $1,300, rendered for damages sustained by the plaintiff on account of the serious sickness of his wife and child, due, as he claimed, to the fact that they were obliged to remain, while waiting for a delayed train for which the wife had a ticket, in the unheated passenger room of the defendant company. The court recognized the common law liability of the defendant company, if the negligent acts claimed were proved and consequent injury were shown to the satisfaction of the jury. In this case the Supreme Court denied a writ of error. In *Missouri, K. & T. R'y. Co.* v. *McCutcheon,* 33 Texas Court of Civil Appeals, 557, 77 S. W. Rep. 232, a verdict and judgment for $1,000 for injuries due to an unheated waiting room were allowed to stand. In *Texas Midland R. R.* v. *Little,* Texas Court of Civil Appeals, 77 S. W. Rep. 958, it was held that where injuries have resulted from an unheated railway waiting room, the company cannot claim immunity because the party suffering from the negligence of the company was cold when entering the room. "It is no less the duty of railway companies," said the court, "to provide warm depots for persons who go there cold to become passengers on their trains than for those who may arrive there in a warm and comfortable condition." It goes without saying, of course, that the company would not be liable for any injury resulting to a person from exposure to the cold before reaching the station. The foregoing are the reported cases, so far as the writer has been able to discover, in which the liability of a railroad company for injuries arising from an unheated waiting room has been directly considered. It will be noticed that, with two exceptions, they all arose in one jurisdiction and were decided by an inferior appellate tribunal. In *St. Louis, Iron Mountain and Southern R'y. Co.* v. *Wilson,* 70 Ark. 136, 140, it is suggested by the court that failure by a railroad company properly to heat a waiting room is *prima facie* negligence.

As germane to the subject under consideration, it may be suggested that it is undoubtedly the law that if the passenger room of a railroad company is an unfit place for its patrons by reason of its foul or uncomfortable condition, a person, while waiting for a train, may leave the place and go elsewhere on the company's premises without that fact affecting his right of action against the company in case of accident, through the fault of the company, while the party is going elsewhere, provided that in so going he uses proper care and does not violate some rule of the company of which he has actual knowledge or which, as a reasonable man, he would be bound to know existed. This proposition is clearly recognized by the Supreme Court of Iowa in *McDonald* v. *Chicago and Northwestern R. R. Co.*, 26 Iowa, 124. The action was brought for damages sustained by a person who, while waiting for a train, left the passenger room, which was in an offensive condition by reason of tobacco smoke, and endeavored to enter the train, while it was standing at some distance from the regular place for receiving passengers, and in so doing was thrown down by a loose plank in the platform steps and seriously injured. In delivering the opinion of the court, DILLON, Ch. J., said: "That, without any statute enacting it, there is a common law duty on these companies to provide reasonable accommodations at stations for passengers who are invited and expected to travel on their roads. See *Caterham R. R. Co.* v. *London R. R. Co.*, 87 Eng. C. L. 410. If the station room is full, or if it is intolerably offensive, by reason of tobacco smoke, so that a passenger has good reason for not remaining there, while this will not justify him in violating reasonable rules and regulations of the company, which are known to him, respecting the place, mode and time of entering the cars, it will justify his endeavor to enter the cars at as early a period as possible, especially if it is dark and cold without, if in so doing he uses proper care and violates no rule or regulation of the company of which he has actual knowledge, or which, as a reasonable man, he would be bound to presume existed. He would not, of course, be justified, by the condition of the passenger room, in rashly endeavoring to board a train in motion, or the like; but if the train had arrived, was on the track, the car doors open, and if, as is frequently if not generally the case, passengers are allowed, or at least not forbidden, to enter the cars before they are drawn up in front of the station, we think a passenger may reasonably and properly make the attempt to reach and enter the cars, if he is not aware of any rule or regulation to the contrary; and if he receives an injury in so doing (he using proper care) from the unsafe and dangerous condition of the platform or the steps in a place where passengers would naturally go, the company are liable therefor." It should be noted that while the judgment below for the plaintiff was reversed by the court for error not affecting the question under consideration, a second judgment in plaintiff's favor was affirmed in 29 Iowa, 170. H. B. H.

SPECIAL ASSESSMENTS AND RAILROAD RIGHTS OF WAY.—Taxation through special assessments, whereby public improvements are made at the expense of a limited number of individual property owners, was at one time severely criticised and often disapproved. Levies of this nature were tolerated by